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Citizenship
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#3

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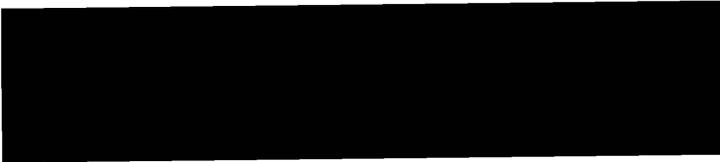


FILE: _____ Office: CHICAGO Date: JAN 10 2007

IN RE: _____

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Chicago, Illinois, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 212(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. The applicant is the spouse of a naturalized U.S. citizen and the mother of four U.S. citizen children. She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her spouse and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated March 31, 2005.

The record reflects that, on November 6, 1992, the applicant married her spouse, [REDACTED] (Mr. [REDACTED]). In 1995, the applicant entered the United States without inspection. On September 21, 1995, Mr. [REDACTED] filed a Petition for Alien Relative (Form I-130), on behalf of the applicant, which was approved on February 19, 1996. On August 15, 2001, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on the approved Form I-130. On August 15, 2001, the applicant was issued Authorization for Parole of an Alien into the United States (Form I-512) and subsequently used the advance parole authorization to depart and reenter the United States on October 16, 2001. The applicant has not departed the United States since that date.

On November 13, 2001, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On appeal, counsel contends that the district director's decision was against the manifest weight of the evidence and was erroneous in fact and law. *See Applicant's Brief* dated April 29, 2005. In support of these assertions, counsel submitted only the referenced brief. The entire record was reviewed and considered in rendering a decision in this case.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission

within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The district director based the finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act on the applicant's admission to being unlawfully present in the United States from 1995 until August 15, 2001, the date on which she filed the Form I-485. Counsel does not contest the district director's determination of inadmissibility.

Hardship to the alien herself is not a permissible consideration under the statute. A section 212(a)(9)(B)(v) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 at 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The record reflects that Mr. [REDACTED] is a native of Mexico who became a lawful permanent resident in 1990 and a naturalized U.S. citizen in 2001. The applicant and Mr. [REDACTED] have a twelve-year old son who is a native of Mexico who became a derivative U.S. citizen in 2003. The applicant and Mr. [REDACTED] have a ten-year old daughter, a nine-year old son and a three-year old daughter who are all U.S. citizens by birth. The applicant is in her 30's, Mr. [REDACTED] is in his 40's and there is no evidence that Mr. [REDACTED] or the applicant's children have any health concerns.

Counsel contends that the district director erred in not considering the hardship to the applicant's children as is dictated by the Seventh Circuit Court of Appeals (Seventh Circuit) holding in *Opaka v. INS*, 93 F. 3d 392 (7th Cir. 1996). The AAO notes that counsel cited a Seventh Circuit due process case, *U.S. v. Runnels*, and it is unable to locate the decision to which counsel makes reference. Moreover, the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (1996), removed hardship to an alien's children as a factor in assessing hardship waivers under section 212(a)(9)(B)(v) of the Act. Therefore, hardship to the applicant's children will not be considered in this decision, except as it may affect the applicant's spouse, the only qualifying relative.

Counsel asserts that the applicant's spouse will suffer extreme hardship because the applicant provides financially for her family in the United States while Mr. [REDACTED] pays for the house that they own, Mr. [REDACTED] will be separated from the applicant, and the applicant's return to Mexico will adversely affect their current family status. Mr. [REDACTED] in his affidavit, states that the applicant has been his emotional support through good times and bad, they would be forced to separate, he may be separated from his children if they accompany the applicant to Mexico and they would not have good educational opportunities if they accompanied her. Mr. [REDACTED] further contends that whether they remain in the United States or travel to Mexico his children will have to deal with the absence of one parent, which is one of the worst things a child can experience and he does not want to be left alone.

The record reflects that, in 2003, Mr. [REDACTED] earned approximately \$35,340. The record shows that, even without assistance from the applicant, Mr. [REDACTED] has, in the past, earned sufficient income to exceed the poverty guidelines for his family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. If the children remain in the United States with Mr. [REDACTED] he will essentially become a single parent and professional childcare may involve an added expense and not equate to the care of a parent. This is not, however, a hardship that is beyond those commonly suffered by aliens and families upon removal. While it is unfortunate that Mr. [REDACTED] may have to lower his standard of living and may be unable to retain the house that the family currently owns, the record does not support a finding of financial loss that would result in an extreme hardship to Mr. [REDACTED] if he had to support himself and his children, even when combined with the emotional hardship described below.

There is no evidence in the record to confirm that Mr. [REDACTED] suffers from a physical or mental illness that would cause him to suffer hardship beyond that commonly suffered by aliens and families upon removal or that would be exacerbated by the applicant's absence. While it is unfortunate that Mr. [REDACTED] may be affected emotionally by his separation from the applicant and his children's separation from the applicant, should they remain in the United States, this is hardship that is commonly suffered by aliens and families upon removal. If the children accompany the applicant to Mexico, while it is unfortunate that Mr. [REDACTED] may be affected

emotionally by the separation from the applicant and his children as well as the lost educational opportunities of children. Again, this is hardship that is commonly faced by aliens and families upon removal.

Additionally, the AAO notes that, as citizens of the United States, the applicant's spouse and children are not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, Mr. [REDACTED] would not experience extreme hardship if he remained in the United States without the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that Mr. [REDACTED] will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(a)(9)(B)(v) of the Act, be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.